



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alpha Q, Inc.
File: B-234403.2
Date: October 31, 1989

DIGEST

1. Signature on bid amendment which is executed on behalf of individual authorized to sign bid by another party who was expressly instructed to do so is legally sufficient to bind firm. The mere fact that evidence of agency was furnished after bid opening does not render the bid nonresponsive.
2. Failure of bidding party to properly and completely execute the representations and certifications contained in a solicitation does not render bid nonresponsive since such representations and certifications are not material terms of the bid and, thus, may be later corrected as minor irregularities.
3. Failure to submit Standard Form 33 with bid does not render bid nonresponsive so long as material terms contained therein are otherwise provided as part of the bid package.

DECISION

Alpha Q, Inc., protests the award of a contract to Connecticut Valley Machine, Inc. (CVM), under invitation for bids (IFB) No. DAAE07-88-B-A323, issued by the Department of the Army for a quantity of mechanical housings used in the engine of the M-1 Abrams Tank. Alpha Q argues that the bid of CVM was nonresponsive.

We deny the protest.

The IFB, issued on an unrestricted basis, requested bidders to submit firm, fixed-price bids for a base quantity of 327 mechanical housing units and an option quantity of 327 units, along with related first article units and data packages. By amendment No. 0001, the Army reduced the base quantity to 159 units and reduced the option quantity to

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159 units; it also altered the delivery schedule and extended the time and date specified for the submission of bids.^{1/}

By the time of bid opening, nine firms, including the protester and CVM, had submitted bids, and CVM was the apparent low bidder. The bid package submitted by CVM consisted of the pages of amendment No. 0001, including the revised bid schedule, and pages 9 through 64 of the original IFB. CVM's bid package did not contain Standard Form (SF) 33 entitled "Solicitation, Offer and Award," and amendment No. 0001 of CVM's bid package alone bore the "signature" of the firm's president followed by three initials in parenthesis. In addition, CVM failed to execute or improperly executed a number of the IFB's representations and certifications. The Army found CVM's bid to be responsive and awarded the contract to the firm. This protest followed.

Alpha Q first argues that CVM's bid is nonresponsive because a proper party did not sign it. Specifically, Alpha Q argues that CVM's president was not the individual who in fact executed the signature appearing in CVM's bid package, and, thus, the firm was not legally bound by the terms of the bid. Rather, Alpha Q argues that the president's signature was executed by a clerical employee of a prospective subcontractor of CVM, Aircraft Components, Inc.

Our Office has long held that the evidence required to show the authority of an individual signing a bid may be presented after bid opening. See, e.g., FMS Corp., B-228201, Sept. 30, 1987, 87-2 CPD ¶ 318; Sentinel Elecs., Inc., B-212770, Dec. 20, 1983, 84-1 CPD ¶ 5. Moreover, we have recognized that the sufficiency of the evidence presented is largely a factual question to be resolved by the contracting agency after consideration of all of the materials presented. See Aamtech Int'l Factors Corp., B-205221, Mar. 24, 1982, 82-1 CPD ¶ 280.

Here, we are satisfied that the contracting officer reasonably determined that the actions of the Aircraft Component's employee served to bind CVM. The record shows that the Army, shortly after bid opening, requested information from CVM concerning the legal effectiveness of the signature. In response, CVM's president provided a sworn affidavit to the Army in which he described the circumstances surrounding the signature on the bid amendment. In

^{1/} Amendment No. 0001, in addition to containing a narrative of the changes, provided bidders with a revised bid schedule.

that affidavit, CVM's president states that the bid had been typed by the Aircraft Components employee and that, as he could not be at that firm's facility before the bid was to be submitted, he had telephonically instructed the employee to sign his name for him. The Army found that this affidavit was sufficient evidence to establish the signing individual's authority to execute the bid and bind CVM. There is nothing in the record to suggest that the Army's factual determination was unreasonable or erroneous. In short, we think that the explicit acknowledgement of CVM's president, under oath, that he instructed the Aircraft Components employee to sign on his behalf was reasonably considered by the contracting officer as sufficient to legally bind CVM to the terms of the bid. In this regard, a signature on an amendment which accompanies an otherwise unsigned bid is sufficient indication of the bidder's intent to be bound. See Wilton Corp., 64 Comp. Gen. 233 (1985), 85-1 CPD ¶ 128. We therefore deny this basis of Alpha Q's protest.

Alpha Q also argues that CVM's bid was nonresponsive because the firm failed to execute or improperly executed various standard certifications and representations of the IFB. For example, Alpha Q points out that CVM: (1) certified itself as a small business but did not certify whether all items to be furnished under the contract would be manufactured by a small business; (2) represented itself as both a manufacturer and regular dealer for Walsh-Healey Act purposes; (3) certified itself as a small socially and economically disadvantaged business (SDB), but failed to specify under which category it claimed such status; and (4) failed to supply either parent company or firm-identifying data.

The Army responds that the errors and omissions contained in CVM's certifications are minor irregularities which were immaterial and properly remediable after bid opening.

We agree with the Army that CVM's errors and omissions in executing its certifications and representations are minor defects which do not affect the responsiveness of its bid. A bidder's failure to complete certifications and representations that have no bearing on whether the bid constitutes an unequivocal offer to provide the product or service does not affect the bid's responsiveness. See R & R Roofing and Sheet Metal, Inc., B-220424, Nov. 21, 1985, 85-2 CPD ¶ 587. First, the failure to certify whether or not the bidder will supply end items manufactured or produced by a small business is immaterial here since this procurement is not a small business set-aside. See Century Marine Corp., B-232630, Dec. 16, 1988, 88-2 CPD ¶ 598. Second, with

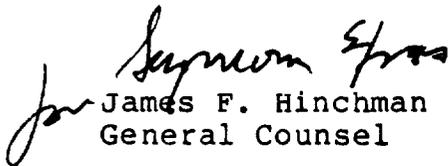
regard to the awardee's Walsh-Healey Act certification, whether in fact a bidder is eligible under Walsh-Healey is not an element which affects a bid's responsiveness since a bidder's Walsh-Healey Act status may be established up to the time of award. Antenna Prods. Corp., B-227116.2,

Mar. 23, 1988, 88-1 CPD ¶ 297. Third, the failure to complete the certification as to SDB status is immaterial since this procurement did not provide for an SDB preference or set-aside. Finally, the parent company data is informational and has no bearing on the bid's responsiveness. Century Marine Corp., B-232630, supra. We therefore also deny this basis of Alpha Q's protest.

Finally, Alpha Q argues that CVM's bid was nonresponsive because the firm failed to submit SF 33, which is the regular cover sheet used in most federal government procurements, with its bid. We disagree.

In our view, other than the signature block and the portion of the SF-33 stating the minimum bid acceptance period, there were no material provisions contained on the SF-33. As to the minimum bid acceptance period, we note that this provision appeared elsewhere in the IFB (see FAR § 52.214-16 (FAC 84-13)), which CVM did furnish. In light of this fact, and in light of our earlier conclusion that the signature on CVM's bid, in connection with other evidence, suffices to bind the firm, we can see no reason to object to the Army's conclusion that CVM's bid was responsive despite the firm's failure to furnish a signed SF-33. See Copy Machines, Inc., B-198691, Aug. 24, 1981, 81-2 CPD ¶ 166.

Accordingly, we deny the protest.


James F. Hinchman
General Counsel